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6/15/2005

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 VOL. I

4 PGS. 1-220

5 EXHIBITS 1-6

6 ARY JEWELERS, LLC,

)

)

7 Plaintiff,

)

8)Civil Action

9 vs)04: CV-10281 EFH

)

10 IBJTC BUSINESS CREDIT CORP., and)

)

11 DAVID MOLINARIO,

)

)

12 Defendants.

)

)

13 DEPOSITION OF THOMAS F. MORGAN, a witness in
14 the above-entitled cause, taken before
15 Lori J. Atkinson, Professional Court
16 Reporter and Notary Public in and for the
17 Commonwealth of Massachusetts at the Westin
18 Hotel, Copley Place, 10 Huntington Avenue,
19 Boston, MA, on the 15th of June, 2005,
20 commencing at 10:00 a.m. pursuant to the Federal
21 Rules of Civil Procedure.

EXHIBIT

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1 about halfway down a little bit more than
2 halfway down in the paragraph it says, it
3 refers to an order to obtain the lender's legal
4 approval to effect completion of the financing
5 arrangement herein contemplated; do you see that
6 language. Right before the second sentence.

7 It says "In order to obtain lender's
8 legal approval to effect the completion of
9 the financing arrangements herein contemplated"?

10 Let me if you don't mind, I will
11 come around.

12 A. Sure.

13 Q. Okay. My question to you is: Would that suggest
14 to you that these are things that need to
15 be done or accomplished prior to the issuance of
16 the commitment i.e., approval as opposed to loan
17 closing?

18 A. Well, again, a commitment letter dose not
19 constitute as a closed loan from the commitment
20 stage to the closing the stage there are some
21 things that have to happen. Because we offer a
22 commitment doesn't guarantee we are going to
23 close.

24 Q. Let me refer you to phrase litigation
25 searches. Do you see that in subparagraph B?

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1 A. Yes.

2 Q. Does that mean that before a commitment or
3 closing on the loan the borrower would need
4 to disclose litigation that it's involved in?

5 A. Yes.

6 Q. This is a standard provision in these type of
7 proposal letters?

8 A. Yes.

9 Q. And would it be correct that it would require
10 litigation information concerning parent
11 companies and affiliate?

12 A. Yes.

13 Q. That's standard operating procedure, is it
14 not?

15 A. Yes.

16 Q. Is it your understanding that ARY Jewelers
17 LLC was a subsidiary of the ARY Group or
18 ARY Trading, which is a foreign company?

19 A. My understanding was that ARY Trading was the
20 parent company and that ARY LLC was setup
21 for purposes of doing business in the states.
22 That was the best of my recollection and
23 my understanding.

24 Q. ARY Trading or the ARY Group was some type of
25 parent entity?

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1 A. Related entity or parent.

2 Q. Would it be fair to say that ARY would have to
3 disclose litigation involving ARY Trading
4 pursuant to this subparagraph E of this document?

5 A. Yes.

6 MR. CARRIGAN: Objection. That calls
7 for a legal conclusion. There is no predicate
8 laid for expertise in answering that.

9 BY MR. GAYER (CONT'D):

10 Q. In any event, you have already testified that
11 Foothill had done its background check to search
12 for that kind of information; is that right?

13 MR. CARRIGAN: Objection. Leading.

14 A. Yes.

15 Q. When you spoke to Mr. Molinario on or about
16 February 28, 2001, is it correct that he told you
17 that IBJ had determined not to issue a loan to
18 ARY?

19 A. I don't recall. I would have to go through my
20 testimony back in May.

21 MR. GAYER: Let's go off the record
22 for a second.

23 (Discussion off the record.)

24 BY MR. GAYER (CONT'D):

25 Q. At the time that you received the call from